

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID BRESSELSMITH,

Plaintiff,

v.

NDOC, et al.,

Defendants.

Case No. 2:22-cv-02084-GMN-VCF

**ORDER GRANTING MOTION TO
REOPEN AND EXTEND DEADLINE**

(ECF No. 7)

On March 2, 2022, the Court issued a screening order and granted Plaintiff David Bresselsmith until April 1, 2023, to file an amended complaint or the action would proceed only on the claims under the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act (“RA”). (ECF No. 5 at 13–14). Sixteen days after that deadline expired, Bresselsmith dispatched a motion to the Court seeking to extend the deadline by 45 days. (ECF No. 7). Bresselsmith argues that his motion is tardy because he submitted two separate motions seeking to extend the deadline in March, but did not receive confirmation that they had been filed. (*Id.* at 2). Bresselsmith filed the instant motion out of “an abundance of caution.” (*Id.*)

The same day Bresselsmith filed his motion to extend time, the Court ordered that because Bresselsmith had not timely filed an amended complaint, this action would proceed only on the claims under the ADA and RA. (ECF No. 8). The Court stayed this action for 90 days to allow the parties to engage in settlement, and explained that it would refer this case to the Court’s Inmate Early Mediation Program. (*Id.*) However, the Court finds that good cause and excusable neglect exist to reopen and enlarge the deadline for Bresselsmith to file an amended complaint.

Bresselsmith is advised that if he chooses to file an amended complaint, the Court will not schedule an early mediation conference as directed by the April 20, 2023, order. Instead, the Court will screen Bresselsmith’s amended complaint and then order the case to proceed to mediation if any of Bresselsmith’s claims survive the screening of the amended complaint. The Court will screen the amended complaint in a separate order, and the process will take many months to complete. If Bresselsmith wants his case to proceed now, he may file a notice with the Court stating his intent to proceed to mediation on his original complaint.

1 **I. CONCLUSION**

2 IT IS THEREFORE ORDERED that the motion to reopen and enlarge the deadline to file
3 an amended complaint (ECF No. 7) is granted.

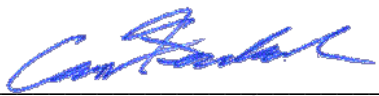
4 IT IS FURTHER ORDERED that Bresselsmith has **until June 5, 2023**, to file an amended
5 complaint.

6 IT IS FURTHER ORDERED that if Bresselsmith chooses not to file an amended complaint
7 and wants to proceed to mediation on his original complaint, he must file a notice with the Court
8 **on or before June 5, 2023**, stating his intent to proceed to mediation on his original complaint. If
9 Bresselsmith chooses to proceed to mediation on his original complaint, the Court will schedule
10 an early inmate mediation conference as soon as possible.

11 IT IS FURTHER ORDERED that if Bresselsmith does not file either an amended
12 complaint or notice with the Court stating his intent to proceed to mediation on his original
13 complaint **on or before June 5, 2023**, the Court will schedule an early mediation conference on
14 the original complaint and deny any leave to file an amended complaint until after mediation.

15 IT IS FURTHER ORDERED that if Bresselsmith chooses to file an amended complaint
16 **on or before June 5, 2023**, no further action is required of any Defendant or the Interested Party
17 Nevada Department of Corrections.

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19 DATED THIS 3rd day of May 2023.

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21 _____
22 CAM FERENBACH
23 UNITED STATES MAGISTRATE JUDGE
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